

General Information Letter: Application of subtraction modification provision to disability annuities.

February 13, 1998

Dear:

This is in response to your letter dated January 30, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

I'm requesting a legal ruling concerning a subtraction of retirement income I made on my Illinois 1040 for 1996. I was notified of additional taxes due based on the Retirement Tape Match project (xxxxxx xxxxxxxx xxxxxx). I've enclosed a copy of the notice.

I subtracted income from three sources:

1. Federally taxed social security disability income.
2. Retirement disability pension from my former employer.
3. Long-term disability payment from CIGNA, my company's disability insurer.

I was advised by individuals in the department of revenue (Don Stout, Kelly Hopkins, and Cherie Denk) that the third subtraction is not valid. It was reported on a 1996 W-2 form and identified as agent third party sick pay on the W-2s from xxxxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx, xxx. (copies enclosed). The long-term disability benefits were provided to me by my former employer (xx&x, and it's spinoff company, xxxxxxxx xxxxxxxxxxxxxxxx) as a part of my benefits from a qualified employee benefit plan. I did not contribute any money toward the cost of this disability coverage. I retired on long-term disability in 1995.

I view all three of these sources of income as disability retirement income and subtracted them on line 5 of my 1996 IL-1040.

Please inform me on the legality of this third subtraction. Thank you.

Department Analysis

Illinois imposes an income tax based upon a taxpayers adjusted gross income for federal purposes which is then modified by several addition or subtraction modifiers explicitly listed in the Illinois Income Tax Act ("IITA"). If a subtraction modifier is not listed in the IITA, a taxpayer may not subtract that amount when determining base income. Section 203 of the Illinois Income Tax Act ("IITA") says in pertinent part:

Sec. 203. Base Income Defined.

(a) Individuals.

(1) In general. In the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable year as modified by paragraph (2).

(2) Modifications. The adjusted gross income referred to in paragraph (1) shall be modified by adding thereto the sum of the following amounts:

and by deducting from the total so obtained the sum of the following amounts:

(F) An amount equal to all amounts included in such total pursuant to the provisions of Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a), and 408 of the Internal Revenue Code, or included in such total as distributions under the provisions of any retirement or disability plan for employees of any governmental agency or unit, or retirement payments to retired partners, which payments are excluded in computing net earnings from self employment by Section 1402 of the Internal Revenue Code and regulations adopted pursuant thereto;

(L) For taxable years ending after December 31, 1983, an amount equal to all social security benefits and railroad retirement benefits included in such total pursuant to Sections 72(r) and 86 of the Internal Revenue Code;

In your letter, you list three sources of income which you wish to subtract from your adjusted gross income. Above are listed the only portions of §203 which may apply to the items of income you list. The first item, social security disability income, may be subtracted by §203(a)(2)(L). Items (2) and (3) may only be deducted if §203(a)(2)(F) applies to the items. Section 203(a)(2)(F) details two ways for a taxpayer to subtract income. Governmental employees may subtract distributions from their governmental disability and retirement plans. Non-governmental employees, however, must fit within the specific sections of the Internal Revenue Code ("IRC") listed in subsection F. From what you have told me, your retirement disability pension from your former employer (item 2) could be subtracted from your adjusted gross income as it comes under IRC §402(a)'s employee trust (pension) listing. Based on the information you have provided to us, it appears that the long-term disability payment from CIGNA (item 3), would not fit within any of the listed IRC sections. The long-term

disability payments, therefore, would not be allowed as a subtraction modification.

If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Staff Attorney (Income Tax)

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